

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 02/08/01?  
b. The request was received on 02/07/02.

## II. EXHIBITS

1. Requestor, Exhibit 1:
  - a. Initial TWCC 60 and Letter Requesting Dispute Resolution
    1. UB-92s
    2. EOBs
  - b. Subsequent Submission of Information
    1. Medical Records
    2. Position statement
    3. EOBs from other carriers
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 06/27/02. The carrier signed for the request on 07/02/02. The response from the insurance carrier was received in the Division on 07/29/02. Based on 133.307 (i) the insurance carrier's response is untimely so the Commission shall issue a decision based on the request.
3. Notice of Medical Dispute Resolution is contained in Exhibit 3.

## III. PARTIES' POSITIONS

1. Requestor: Letter dated 11/14/01  
**"Payment amounts not covered by an established fee guideline are subject to the criteria identified in section 413.011(b) of the Texas Labor Code: ...This is not a Cost Based Model of reimbursement: ...The Fact that other carriers pay the amount billed by the Requestor does provide evidence of fair and reasonable: ...Acute Care Inpatient Hospital Fee Guidelines are inapplicable: ...The Consistency with which a payment formula is applied is no proof that it is air [sic] and reasonable....Any Methodology that uses The HCFA Ambulatory surgery Center 1994 Medicare Program: Update of Ambulatory Surgical Center Payment Rates Effective for Services on or After October 1, 1997 is invalid."**
2. Respondent: Untimely 14 day Response

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 02/08/01.
2. The provider, an ambulatory surgery center, billed a total of \$22,355.00.
3. The carrier reimbursed \$1,118.00 for the DOS in dispute based on the Requestor's table. The EOBs submitted with this packet indicate the carrier denied the reimbursement as M-In Texas, outpatient services are to be paid as fair and reasonable.
4. The amount in dispute is \$21,237.00, the difference between the billed amount and the amount reimbursed, per the disputed services table.

#### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate..."

Section 413.011 (b) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The provider has submitted four EOBs from other carriers as examples of "fair and reasonable" reimbursement for same or similar services. These EOBs were paid at 78% to 94% of the billed amount. Regardless of the carrier's methodology, response, or lack thereof, the burden is on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to provide reimbursement at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011 (d) of the Texas Labor Code. The EOBs provide no evidence of amounts paid on behalf of managed care patients of ASCs or on behalf of other non-workers' compensation patients with an equivalent standard of living. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 8<sup>th</sup> day of August 2002.

Carolyn Ollar, RN, BA  
Medical Dispute Resolution Officer  
Medical Review Division

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director